HON'BLE SMT. JUSTICE T. MEENA KUMARI

&

HON'BLE SRI JUSTICE P. LAKSHMANA REDDY

WRIT PETITION NO :25198 OF 2003

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Dated 02-09-2005

Between:

S, Venkata Rao, son of Ranukaiah, 45 years, Cine Operator, District. Public Relations Office, Ongole, resident of Ongole, Prakasam District.

PETITIONER.

AND

1. The Regional Deputy Director, I & P. R. Department, Ongole and others.

RESPONDENTS

ORDER: (Per the Honourable Smt. Justice T.Meena Kumari)

This writ petition is filed by the 2nd respondent-writ petitioner herein aggrieved by the order in O.A. No. 3315 of 1989 passed on 10-9-2003 by the learned A.P. Administrative Tribunal, Hyderabad under which the O.A. is allowed with the observations as mentioned therein.

3rd respondent herein is the applicant whereas the writ petitioner is the 2nd respondent and respondents-1 and 2 herein are respondents-1 and 3 respectively before the tribunal. The parties will be referred to as arrayed before the tribunal.

Originally, the applicant filed an application before the Tribunal under section 19 of the Administrative Tribunals Act, 1985 seeking to declare that the proceedings No.406/SA/89 dated 20-12-1989 issued by the 1st respondent are illegal, arbitrary and violative. The Tribunal allowed the O.A. by setting aside the orders impugned therein. Aggrieved by the same, the present writ petition has been filed by the writ petitioner.

Heard both the counsel and perused the entire material on record and the order impugned.

The main grievance of the 2nd respondent is that he was appointed as a Cine Operator on 02-03-1977 and his probation was also declared in the same post. The Government of A.P. vide G.O.Ms.No:703, G.A.D. Department dated 28.11.1987 created 25 posts of Audio Visual Supervisors and allotted one each for 23 Districts. Out of the remaining two posts, one post each is allotted to the Office of the Deputy Director, Cuddapah and Warangal. The qualification prescribed for the post of Audio Visual Supervisor is SSLC or HSC or SSC or equivalent qualification with five years of service as Cine operator and the persons are required to pass the Account test for subordinate Officers Part-I within the period of probation and they shall undergo the training fixed by the Government. But, contrary to the same, T.Manikya Rao, U.Shanmukeswararao and B.Ramachandra Rao, who are unqualified persons,

were promoted and therefore, he and others filed R.P.No.2124 of 1988 for issuance of the directions to the concerned to give promotions to them as Audio Visual Supervisor by reverting the persons mentioned above. The tribunal by its order dated 23-12-1988 directed the concerned officials to revert the unqualified persons in question, and accordingly, they were reverted to the posts of Cinema operators. He filed R.M.P.No.1674 of 1999 with Rev. R.M.P.No.2753 of 1999 in R.P.No.2124 of 1988 seeking to condone the delay and also to clarify the order dated 23-12-1988 and accordingly, the tribunal modified the orders with a direction to the concerned officials to consider his case for regular promotion even before the other candidates are considered for promotion after their acquisition of qualification on the ground that he is already qualified. In view of non-implementation of the orders of the Tribunal, 2nd respondent- writ petitioner filed writ petition No.16977 of 1989 seeking a direction to the concerned officials to implement the orders of the Tribunal. This Court by an order dated 26-12-1989 in W.P.M.P.No.22489 of 1989 in W.P.No.16977 of 1989 directed the concerned officials to implement the same within one month from the date of the order passed by this Court. Accordingly, the concerned officials promoted him to the post of Audio Visual Supervisor reverting the 3rd respondent. Aggrieved by the same, the applicant filed O.A.3315 of 1989 before the Tribunal, and the Tribunal by its order dated 08-02-1996 allowed the O.A. holding that the applicant is senior to the 2nd respondent. Aggrieved by the same, he filed Rev. M.A. No. 746 of 1996 in O.A.No.3315 of 1989 on the ground that there is an error apparent on the face of the record as the applicant did not possess the required qualification to hold the post of Visual Supervisor. The Tribunal has in turn disposed of the same holding that the scope of the review is very limited and therefore, it cannot be entertained. Aggrieved by the same, he filed writ petition No.26428 of 1999 before this Court and this Court by an order dated 30-1-2001 allowed the same setting aside the order dated 26-10-1999 remitting back the matter for fresh consideration on merits. Accordingly, a Division Bench of the Tribunal on 27-3-2003 allowed the M.A. No.746 of 1996 in O.A. No.3015 of 1989 holding that the order passed by the Tribunal in R. Ps. and the clarificatory order were not considered by the tribunal while disposing of O.A.No.3315 of 1989, and further directed the O.A. to be heard on merits. The Tribunal allowed the O.A. filed by the applicant by its order dated 10-09-2003. Aggrieved by the same, the present writ petition has been filed by the writ petitioner.

We have gone through the order impugned. The fact remains undisputed is that the applicant is senior to the unofficial respondents as per their regularization and the post in question is a non selection one and the criteria for promotion to the said post is seniority cum merit. The applicant has acquired the required qualification even during the year 1986 itself and apart from that, the passing of Accounts Test, is not a pre requisite for promotion to the post in question. In this regard, the tribunal is justified in holding that the 2nd respondent ought to have taken steps to implead the applicant as a party respondent in the O.A. since he was already promoted and when the applicant is not a party in the R.P. or Review R.M.P., any direction issued by the tribunal affecting the interests of the applicant, is not binding on him. The tribunal is also justified in holding that even by March 1989, the date of occurrence of vacancy, the applicant was qualified and therefore, it cannot be said that the applicant is not qualified to hold the post in question.

In this background of the matter and in the facts and circumstances of the case, We feel that the contradictory opinions arrived at in different proceedings prior to the present O.A. in question, are only due to the communication gap and the same has been filled up by the tribunal by its cogent and consistent reasoning, which do not warrant any interference by this Court. Hence, We see no merits to entertain this writ petition and the same is liable to be dismissed.

Accordingly, this writ petition is dismissed. No costs.

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Justice T.Meena Kumari

Date: 02-09-2005.

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Justice P.Lakshmana Reddy

Dvs/Gurc

HON'BLE SMT. JUSTICE T. MEENA KUMARI

&

HON'BLE SRI JUSTICE P. LAKSHMANA REDDY

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WRIT PETITION NO :25198 OF 2003

(Judgment delivered by the Honourable Smt. Justice T.Meena Kumari)

Dated 02-09-2005